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JUL 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendments to the Amateur Service)
Rules Including Amendments For)
Examination Credit, Eligibility)
For A Club Station License,)
Recognition Of The Volunteer)
Examiner Session Manager, A)
Special Event Call Sign System,)
And Self-Assigned Indicator In The)
Station Identification)

WT Docket No. 95-57

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED
IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING

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SUMMARY

The American Radio Relay League, Incorporated (the League), by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) submits its comments in response to the Notice of Proposed Rule Making (the Notice), FCC 95-173, 10 FCC Rcd. 5014 (1995). The Notice proposes a number of miscellaneous rule changes to Part 97 of the Commission's rules governing the Amateur Service. Two of those proposed changes are based on petitions for rule making submitted by the League, RM-8418 and RM-8462.

The League supports the concept of a lifetime amateur radio operator license, but does not support the proposed alternative to the League's petition contained in the Notice. The League supports the proposed increase in the minimum number of persons necessary to entitle a group of amateurs to a club station license (and soon to a club station vanity call sign). It strongly opposes the implementation in the regulations of a "VE Session Manager", which would seriously compromise the integrity of the VE system, which has by the Commission's admission worked with resounding success. The League also supports the implementation of a Special Event Call Sign program as proposed. Finally, the League supports the proposed clarification of the self-assigned indicator regulation.

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**COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED
IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING**

The American Radio Relay League, Incorporated (the League), by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) hereby respectfully submits its comments in response to the Notice of Proposed Rule Making (the Notice), FCC 95-173, 10 FCC Rcd. 5014 (1995). The Notice proposes a number of miscellaneous rule changes to Part 97 of the Commission's rules governing the Amateur Service. Two of those proposed changes are based on petitions for rule making submitted by the League, RM-8418 and RM-8462. In continued support of these proposals, and in response to the other proposals contained in the Notice, the League states as follows:

I. Lifetime Operator Licenses In the Amateur Service

1. On January 6, 1994, the League filed a petition for rule making, RM-8418, seeking amendment of Section 97.17, 97.19(c) and

97.23(a) of the Commission's rules to extend the term of the operator license portion of the Amateur Service license (FCC form 660) to the lifetime of the licensee. The purpose of the proposed extension of the operator portion of the license, and the benefit, is to permit persons who have held an amateur operator license, but who left the Service or became inactive for a period of time, due to professional or family commitments, to return to the Service without the necessity for relicensing. Though the station license will have expired, and the call sign assigned to that station license will have been relinquished, the person who wishes once again to return to the amateur service at the license class he or she previously possessed could do so without the necessity of re-examination, and could simply re-obtain a station license and a new call sign by the filing of FCC form 610. The number of persons who may benefit from this relief of restrictions is believed to be relatively substantial. The pressures of family obligations and business commitments often require individuals to forego amateur radio until a later time in their lives, and these persons should be encouraged to re-enter the Service when their personal circumstances permit, thus to continue the technical self-training and public service communications that the Amateur Service offers.

2. The League noted in its petition that the relief requested should in the future reduce the burden on the Volunteer Examiner program slightly, to the extent that persons who were once licensed and who seek to become licensed again would not be required to present themselves for re-examination for those examination

elements necessary for the class of license formerly held. The League believes that a person who holds an amateur license should be permitted to retain the operator portion of the license, so that, at a later date, when his or her interest in the service is rekindled, a station license can be obtained on the basis of the operator license and the FCC Form 610, and the operator will retain the license class previously earned, without having to be re-examined from the beginning. It is possible for an inactive amateur to retain his or her license merely by the filing of a Form 610 during the term of the license, in order to retain both the station and operator licenses, and the assigned call sign. There is no practical difference, in terms of the operating or technical capabilities (or the ability to operate in accordance with the Commission's rules) between a person who periodically renews his or her license, but is inactive as a radio amateur, and one who permits the license to expire and later wants to become reinvolved in the benefits of amateur radio.

3. The Commission's proposal in the Notice is far different from the League's proposal; it does not create a lifetime operator license. The operator license under the Commission's proposal would actually expire. The applicant would be given credit for the fewest examination elements necessary for the license class held, thus to permit the former licensee to re-obtain an operator and station license, but it would not constitute the extension of the operator license itself. While under the Commission's plan, the former licensee will not have to retake the examination elements, the

operator license will nonetheless have expired, which is what the League's petition sought to avoid. The non-expiration of the operator license, as the League requested, would entitle the operator license holder to merely reapply directly to the Commission on FCC form 610, with a copy of the operator license, for the reinstatement of the station license and the issuance of a call sign. Furthermore, during the period of expiration of the station license, the holder of a lifetime operator license could still operate the station of another licensed amateur who holds a station license. This is not so under the Commission's proposal.

4. The Commission's proposed rule would require that the holder of the expired station/operator license apply for a new license, and simply be given examination credit by a VEC for the examination elements commensurate with the license class. **There is, however, no examination necessary;** the matter is akin to a license renewal or reinstatement, not an upgrade. The processing of such applications by VECs would be ultra vires their jurisdiction under Section 4(f)(4) of the Communications Act, which merely permits examinations to be prepared and administered by Volunteer Examiners. It does not extend their authority to processing renewal applications, and the Commission is not entitled to accept voluntary service which is not specifically provided for by statute. See 31 U.S.C. §1342. For this reason, and because the League's petition specifically requested lifetime operator licenses in the Amateur Service, and not examination credit for expired station/operator license holders, the League requests that the

Commission not adopt the proposed Section 97.505(a)(10) contained in the Notice. Instead, the Commission should adopt the rule changes proposed in the League's petition, RM-8418, which provide for a lifetime operator license. The Commission has indicated its agreement with the policy considerations advocated in the League's petition; it need only implement them in a way that is permissible under the terms of the Communications Act, and in a way that actually accomplishes the proposal set forth in the Notice.

II. Club Definition and Eligibility Requirements

5. On April 4, 1994, the League filed its Petition for Rule Making seeking amendment of Section 97.5(d)(2) of the Commission's Rules (47 C.F.R. §97.5(d)(2)) to more appropriately determine eligibility to hold an amateur club station license. The current definition of an amateur club requires only two persons to constitute a club. This is an insufficient number of persons to prevent abuse of the club licensing program, recently reinstated by the Commission.

6. After the elimination of the issuance of new club licenses in 1980, and until recently, there was not as much concern about the definition of amateur radio clubs for purposes of holding a license as there otherwise might have been. The League, however, in a Petition for Rule Making (RM-7243) filed in 1990, seeking miscellaneous changes to the Amateur Service Rules as a followup to the Part 97 revisions undertaken in Docket 88-139, requested that the Commission modify the criteria for holding a club license, as

the two-person requirement was facially insufficient to insure that a particular group of amateurs was a bona fide club. The Commission considered this request, and several other miscellaneous rule change proposals contained in RM-7243 and in other petitions, in a consolidated rule making proceeding, Docket 90-561. In the Notice of Proposed Rule Making¹ in that proceeding, however, the Commission refused to propose the change in the eligibility requirement for club licensing requested by the League. Its justification was as follows:

Club membership. The ARRL requests that Section 97.5 of the Commission's Rules, 47 C.F.R. §97.5, be amended to increase to at least four the minimum number of members needed for the purpose of holding a club station license. The ARRL states that if the issuance of new club station licenses is ever resumed, the present two-person requirement would invite applications from parties that are not clubs. No new station licenses, however, have been issued in nearly thirteen years and at this time we do not foresee that we will resume doing so. To increase the number of required club members, moreover, could deny license renewal and modification to some of the existing 2,065 club stations. No change, therefore, is proposed herein.

5 FCC Rcd. at 7658.

7. The Commission has, since then, amended the rules to provide for the resumption of club and military recreation station licensing and the assignment of new call signs to clubs. Order, 8 FCC Rcd. 3594 (1993); vacated by Memorandum Opinion and Order, 8 FCC Rcd. 103 (FCC 93-546, released December 29, 1993); Report and Order, 10 FCC Rcd. 1039 (1995). The Commission is currently issuing new licenses and assigning sequential call signs to amateur clubs,

¹ FCC 90-370, 5 FCC Rcd. 7658 (1990).

upon application, and will shortly implement the issuance of vanity call signs to clubs. Therefore, the bona fides of clubs, and the means of determining such for purposes of entitlement to a club license, is now once again an important consideration.

8. The Commission no longer reviews club organizational documents to determine eligibility, nor does the rule call for any demonstration of the existence of the documents required pursuant to current Section 97.5(d)(2) of the Rules. Nor is there any definition of the "management" required for club identity, or a description of the nature of the organizational documents required to be maintained by the applicant. Thus, it is perfectly possible for, as an example, a husband and wife, desiring an alternative call sign, to prepare a minimal organizational document, declare between them a management structure, and declare themselves an amateur club and apply for a license. The minimum qualifications are simply insufficient to distinguish a bona fide amateur club, which should be encouraged and provided the identity of a separate license and call sign, from two individuals who simply wish to obtain a distinctive alternate call sign but who do not function as, nor maintain the indicia of, a normal amateur radio club.

9. It is perhaps not practical for the Commission to resume the requirement of submission of organizational documents with FCC form 610-B, nor for the Commission to scrutinize such documents. However, the two-person minimum requirement was adopted at a time when such a requirement was in effect. Essentially by definition, however, if the operative basic qualification for club licensing

and entitlement to a club station call sign is a minimum number of persons, that number should be substantive. The League believes it proper, as a minimal definitional characteristic, to require that at least four persons associate themselves together in order to constitute a club for licensing and call sign purposes. To have only three or two persons associated together as a club makes the "management" requirement difficult to conceptualize. Nor is it likely that a two- or three-person entity would have the functional indicia of a club sufficient to justify the creation of a separate identity for that purpose.²

10. Accordingly, the League continues to support the proposed rule change, to increase from two to four the minimum number of members required to constitute an amateur radio club for licensing and call sign issuance purposes, and urges the Commission to adopt the change at the earliest possible time.

III. VE Session Manager

11. The Commission next proposes to recognize the concept of the "VE Session Manager" at amateur radio examination sessions. The concept, at variance from existing rules governing VE sessions, is that instead of recognizing in the rules three examiners, each of whom is jointly and severally responsible for the proper conduct of

² The Commission, in 1990, expressed concern that an increase in the minimum number of members for club status might disenfranchise clubs that are currently licensed. The League does not believe, based on its own experience with bona fide affiliated clubs, that such is the case.

the examination session, and each of whom is equally responsible for its integrity, the Commission proposes to hold only one person responsible for the proper conduct of the session. This concept is based on a petition filed on or about July 15, 1993 by the "Rules Committee of the National Conference of Volunteer Examiner Coordinators" (NCVEC).

12. The League strongly opposes the proposed changes in Sections 97.509 and 97.515 contained in the Appendix to the Notice. The League is the largest VEC, and is responsible for the administration of more than 60 percent of all examinations for amateur licenses administered in the United States. That percentage has increased over time, and continues to do so. While the ARRL-VEC in fact urges use of a "team liaison" for each of its three-VE examination administration teams as a matter of convenience, there is no reason whatsoever to incorporate such a concept in the rules. There is no indication that the VE teams are burdened by the three-VE concept, and there is no reason at all why the three VEs should not each be held jointly and severally responsible for the proper conduct of each examination administered by that team. To permit a single person to bear the responsibility for the proper conduct of an examination session makes it far easier for an examination session to be compromised, without detection.

13. It is impossible to define the problem that the proposed regulation is intended to solve, making the proposal pure surplusage. If the appointment of a "VE Session Manager" is simply consistent with good management practice to insure proper

delegation of administrative functions, then a Commission rule is not necessary. Nor is it necessary that the public contact person for a VE test session even be one of the three examiners. The League, for example, uses a "VE Team Contact Person", who is the VE program's local contact with the general public, and who handles the numerous questions that candidates ask before an examination session, such as what time the test session begins, how to get to the test site, etc. This person would also receive Form 610 applications and examination fees from preregistrants. It is hardly necessary for this person to be among the three accredited examiners. As noted above, the League also urges its examiners to designate a "Team Liaison"; the person who receives the confidential examination materials from the VEC for a particular examination session, and serves as the point of contact between the VE team and the VEC, to provide an efficient means of communication. The issue of a VE Session Manager should be a matter subject to the discretion of the VE teams, rather than a regulatory requirement.³

14. The Notice, noting earlier League opposition to the "Session Manager" concept because it eliminates the joint and

³ The Commission offers, as a justification for the Session Manager requirement, that in a survey of VEs and VECs, it was determined that VE teams often decide to answer to a team leader, who is the person who arranges for cost reimbursement and maintains records. If the three VEs decide to make such a delegation, that is up to them. It certainly is no reason whatsoever to make a practice such as that into a regulation. It is an especially poor concept when viewed in light of the fact that the three-VE requirement is in place in order to insure the integrity of the examination process in the first place.

several liability of the three VE requirement, proposes to continue the three VE requirement, but to place all responsibility on the Session Manager to "plan, organize, keep records, and directly supervise the activities of other VEs at a session where examinations for amateur operator licenses are administered". He or she is also to be responsible for the "conduct of the examinees" (See proposed Rule Sections 97.3(a)(47), 97.509(a) and 97.515 in the Appendix). It would be impossible to preserve any ability to sanction the other two VEs in the case of an examination irregularity if these regulations are implemented as they are. The establishment of a VE Session Manager is no more and no less than the creation of a single person to be held responsible for the proper conduct of an examination session. It is totally antithetical to the concept of holding each of three VEs jointly responsible for the proper administration of examinations.

15. The three VE requirement, as is provided for in the current rules, contributes significantly to the integrity of the test sessions, since three examiners, each of whom is individually responsible for the proper conduct of the session, are each separately obligated to insure that no irregularities are present. The requirement also contributes to the perception of integrity of the test session, which, the League has noted repeatedly over time, is as important as the actual integrity of the system. Related to this, it is noted that the proposed rules contained in the Appendix to the Notice, at Section 97.515(d), would impose a new requirement, obligating the VE session manager to maintain a log of

each examination event, with certain data. The centralization of the obligation to conduct this additional record keeping, not heretofore required by the Commission, in the VE session manager not only detracts from the ability of the other two examiners to monitor the integrity of the examination sessions, but also detracts from the ability of the VECs to maintain information about and monitor the activities of the sessions, based on currently implemented procedures which involve shared logging arrangements between the VE team and the VEC. In short, the system is not broken, doesn't need fixing, and the Commission's proposal is extreme overregulation.

16. In the Report and Order, FCC 83-433, 48 Fed. Reg. 45652, released September 29, 1983, which implemented the Commission's statutory authority to utilize volunteer examiners, the Commission reviewed the comments, most of which addressed the need for three examiners. The Commission had proposed in the Notice of Proposed Rule Making in Docket 83-27 that there be three examiners per test session, one of whom, the "team chief", must be an Extra Class licensee. That concept was abandoned, however, in favor of having three examiners, each of which is responsible for the proper conduct of the examination:

The use of three examiners provides for cross-checking to assure the correctness of answers to examination questions, to assure proper completion of license applications, and to minimize the likelihood of any possible fraud or abuse.

The ARRL commented that rather than requiring team chiefs to keep examination answer sheets, we should have

Volunteer-Examiner Coordinators (VEC's) act as their repository to allow VECs to more fully discharge their function of reviewing the suitability of questions. We agree, and we have made this change in the rules we are adopting. With the elimination of this function, "team chiefs" would no longer have any specified duties separate and apart from the other examiners. We are therefore deleting the concept of a "team chief" from the rules.

Id., 48 Fed. Reg. at 45653.

17. The concept of joint and several liability has worked well in enforcement situations, and it has been held that each examiner in an examination test session is responsible for all portions of the test session. In Nomal Vizcarrondo, 65 RR 2d 1712 (1989), the Chief, Special Services Division, rejected a claim by a VE that an examination irregularity was the fault of other VEs in a three-VE team:

Rivera De Jesus also argued that Santo Vazquez, as VE "in charge of the session", had sole responsibility for the integrity of an examination session. This view is incorrect. The Commission does not recognize such a distinction between VEs. All administering VEs are equally responsible for the integrity of each examination session. See, §97.33.⁴

65 RR 2d at 1717.

18. The Commission should not surrender the benefits of the three-examiner concept by diluting the joint and several liability of the three-examiner teams, placing the responsibility in but one of the three VEs. This concept serves to insure the integrity of

⁴ That Section, dealing with Volunteer Examiner Conduct, is now §97.517, and is essentially the same: "No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in the revocation of the VE's amateur station license and the suspension of the VE's amateur operator license."

the examinations, and the perception of the integrity of the system as well. It discourages any unilateral efforts of an individual who might otherwise be tempted to participate as a VE in an irregular examination session, and at the same time it encourages cross-checking of the examinations for accuracy. It should be left to the individual VE teams whether they wish to designate a team leader to organize the examination administration, but in no case should the concept of joint and several liability of the three-examiner team members be diluted. These proposed rules should not be adopted.

IV. Special Event Vanity Call Sign System

19. The Commission proposes to implement the Special Event Vanity Call Sign system, by use of one-by-one (one letter prefix, the region number, and one letter suffix) call signs. This is a beneficial plan, and one which the League has previously supported in Docket 93-305. The Commission's plan, to permit temporary assignment of the 780 call sign block for periods up to 15 days or the duration of the special event, whichever is shorter, is a prudent method of administration of the limited call sign block. Use of a "grant" stamp for requests will permit rapid handling of such requests.

20. The certification that the event is of "special significance" to the amateur community is a somewhat vague concept, but perhaps necessarily so, and the temporary nature of the use of the call signs would dictate a liberal definition of the term in practice. The League requests the Commission proceed with the

implementation of the plan. It is not clear from the Notice whether there would be a regulatory fee for the use of the special event call sign, and given the temporary nature of the use of it and the limited number of requests anticipated, it is assumed that there will be no fee for applicants for special event call signs.

V. Self-Assigned Indicators

21. The Commission next proposes to clarify its rules and policies toward the use of self-assigned indicators before, after or both before and after the Commission-assigned call sign is permissible. These must be separated from the Commission call sign by the slant bar or a suitable word describing the slant bar so that there is no confusion created, and the identification is not obscured. There can be no conflict in the use of such identifiers with any prefix issued to any other country or any FCC indicator specified for use in the Amateur Service or otherwise in the Commission's rules. This clarification will facilitate amateur operation in disasters and disaster communication preparation, and the League supports the change.

VI. Conclusions

22. In summary, the League supports the concept of a lifetime amateur radio operator license, but does not support the proposed alternative contained in the Notice. It supports the proposed increase in the minimum number of persons necessary to entitle a group of amateurs to a club station license (and soon to a club

station vanity call sign). It strongly opposes the implementation in the regulations of a "VE Session Manager", and supports the implementation of a Special Event Call Sign program as proposed. Finally, the League supports the proposed clarification of the self-assigned indicator regulation.

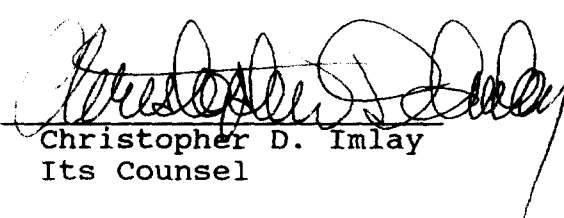
Therefore, the foregoing considered, the American Radio Relay League, Incorporated, respectfully requests that the Commission issue a Report and Order at an early date implementing portions of the Notice proposal, with the modifications set forth in these comments, and not implementing the VE Session Manager proposal.

Respectfully submitted,

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